streets for twenty-five years, stipulating that free transfers be issued and eight tickets be sold for twenty-five cents. The plaintiff duly accepted and established a trolley system. In 1918, a strike occurred and the National War Labor Board increased the wages of the plaintiff's employees fifty per cent, and recommended that the city allow an increased fare. The city refused. The company then gave notice to the city that it regarded the franchise as cancelled and increased the fares to five cents a single trip. A bill was filed to enjoin the city from enforcing the terms of the ordinances. *Held,* that the bill must be dismissed. *Columbus Ry. Power & Light Co. v. City of Columbus* (1919) 39 Sup. Ct. 349.

It is well established that a city, acting under statutory authority, may make contracts by which privileges in the streets are granted in consideration of a promise to render services at a fixed charge. *Vicksburg v. Vicksburg Waterworks Co.* (1906) 206 U. S. 496, 27 Sup. Ct. 762; *Cleveland v. Cleveland City Ry.* (1903) 194 U. S. 512, 24 Sup. Ct. 756. The city has no power to terminate such an agreement. *Vicksburg Waterworks Co. v. Vicksburg* (1904) 202 U. S. 453, 26 Sup. Ct. 661. In the principal case, the railway held itself excused from performance of its contract through supervening impossibility due to war conditions. Had that been so, it could have continued operation on the basis of an implied grant for an indefinite period, setting the old rates aside as confiscatory. *Denver Union Water Co. v. Denver* (1917) 246 U. S. 178, 38 Sup. Ct. 278; *Detroit United Railway v. Detroit* (1919) 248 U. S. 429, 39 Sup. Ct. 151. But the War Labor Board merely stated conditions, under which the plaintiff had contracted to operate; and made a recommendation. It made no executive order making performance impossible. See *Metropolitan Water Board v. Dick, Kerr & Co.* [1917] 2 K. B. 1, [1918] A. C. 119; *Moore & Tierney v. Roxford Knitting Co.* (1918, N. D. N. Y.) 250 Fed. 278; see (1918) 27 YALE LAW JOURNAL, 953; (1919) 28 *ibid.* 399. Nor is the present case one of temporary suspension of the duty to perform, as in *Tamplin S. S. Co. v. Anglo-Mexican etc.,* [1916] 2 A. C. 397. To be sure, the old rule holding contractors to the letter of their agreements has been somewhat relaxed, and in exceptional cases courts have given relief from dangers and hardships through the medium of constructive conditions. *Chicago, etc. Ry. v. Hoyt* (1893) 149 U. S. 1, 13 Sup. Ct. 779; *Kronprinzessin Cecilie* (1917) 244 U. S. 12, 37 Sup. Ct. 490, (1917) 27 YALE LAW JOURNAL, 247, 791. But the court in the instant case weighed the fact that no loss had been shown *over the full period of operation,* and decided that this was not a case in which such a condition should be implied. The case thus falls under the general rule that unforeseen difficulties do not excuse performance.

CONTRACTS—THIRD-PARTY BENEFICIARY—MATERIALMEN AND BUILDER'S BOND.—The defendant surety company bound itself to the owner of a building, as obligee, to see that the building contractor should perform all of his duties to the owner, one of these duties being that he should pay all claims for labor and material. It was expressly provided in the bond that the surety was to be notified of any act on the part of the principal that might involve loss to the surety, immediately upon knowledge of such an act coming to the owner or his supervising architect. No notice of this sort was ever given. The materialman, being unpaid, brought suit against the surety company on the bond. *Held,* that the materialman might maintain suit. *Forburger Stone Co. v. Lion Bonding & Surety Co.* (1919, Neb.) 170 N. W. 897.

See COMMENTS, *supra,* p. 798.

DAMAGES—"DUTY" TO MITIGATE—RECOVERY OF EXPENSES OF DENIAL IN ACTION FOR LIBEL.—The defendant published a libel concerning the plaintiff, which the